

September 14, 2011

VIA ELECTRONIC MAIL

The Hon. Rick Perry
c/o Office of the General Counsel
1100 San Jacinto Street, Suite 412
Austin, Texas 78701

Re: Request for 30-day Reprieve for Duane Edward Buck

**Mr. Buck is scheduled to be executed on
Thursday, September 15, 2011**

Dear Governor Perry:

In 2000, the Attorney General of the State of Texas concluded that prosecutors had violated the United States Constitution by using the color of Duane Edward Buck's skin as a factor for the jury to weigh in favor of sentencing him to death. Along with Senator Rodney Ellis, former Assistant District Attorney Linda Geffin, and surviving victim Phyllis Taylor, I am writing to request that you grant a 30-day reprieve from execution for Mr. Buck, by exercising your authority pursuant to Article IV, Section 11 of the Texas Constitution and Article 48.01 of the Texas Code of Criminal Procedure. Mr. Buck's execution is currently scheduled for Thursday, September 15, 2011, after 6:00 p.m.

"Discrimination on the basis of race, odious in all respects, is especially pernicious in the administration of justice."

– *Rose v. Mitchell*, 443 US 545 (1979)

On May 5, 1997, Duane Edward Buck was convicted of capital murder in Harris County for the July 1995 shooting deaths of Debra Gardner and Kenneth Butler while under the influence of drugs. A third person, Phyllis Taylor, was also shot, but survived. Ms. Taylor has joined in this request for a reprieve.

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During Mr. Buck's trial, Dr. Walter Quijano was called by the defense and testified that he did not believe Mr. Buck would be a future danger based on several factors, primarily that Mr. Buck had no violent criminal record and did not display violent tendencies. On cross-examination, the government, through a leading question, elicited testimony from Dr. Quijano that people are more likely to commit acts of violence if they are black:

Q: You have determined that the sex factor, that a male is more violent than a female because that's just the way it is, and that ***the race factor, black increases the future dangerousness for various complicated reasons; is that correct?***

A: Yes.

During its closing argument, the government urged the jury to rely on Dr. Quijano's testimony to find that Mr. Buck would constitute a future danger. 28 RR 260 ("You heard from Dr. Quijano, who had a lot of experience in the Texas Department of Corrections, who told you that there was a probability that the man would commit future acts of violence."). The jury found that Mr. Buck would be a future danger, and he was sentenced to death.

Following an intensive review of cases in which Dr. Quijano had testified, the Attorney General, in June 2000, identified six cases in which constitutional error had occurred:

After a thorough audit of cases in our office, we have identified eight more cases in which testimony was offered by Dr. Quijano that race should be a factor for the jury to consider in making its determination about the sentence in a capital murder trial. ***Six of these eight cases are similar to that of Victor Hugo Saldano.***

Mr. Buck was one of those six cases. To repair the integrity of the criminal justice system, Texas's then-Attorney General (now United States Senator) John Cornyn made solemn guarantees to the public that the Office of the Attorney General would take unprecedented steps to ensure that no death sentence obtained in such a constitutionally-offensive manner would ever be carried out. Not only that, his Office had also reviewed the cases of all individuals executed since 1982, ***i.e., every single execution Texas had carried out in the modern era***, to reassure Texans that the State had not executed anybody on the basis of such repugnant testimony. Texas upheld its promise in six of the seven cases in which the Attorney General had concluded that the government used the defendant's race as evidence of future dangerousness. In each of those cases, the court overturned the death sentence.

In Duane Buck's case, however, Texas broke its promise to restore its citizens' faith in the Constitution. When Mr. Buck's case reached federal court, Texas inexplicably defended the government's reliance on Mr. Buck's race as a basis for executing him. As a result, of the six individuals identified by Attorney General Cornyn in his June

2000 review, only Mr. Buck faces the prospect of having a death sentence procured by the government's odious reliance on race carried out.

The State of Texas should not condone any form of racial discrimination in the courtroom. The use of race in sentencing poisons the legal process, undermines the reliability and fairness of the sentence, and breeds cynicism in the community toward the very institution entrusted with protecting the rights of all persons equally. Mr. Buck's sentence offends not only the United States Constitution but also Texans' shared commitment to racial equality and an equitable justice system.

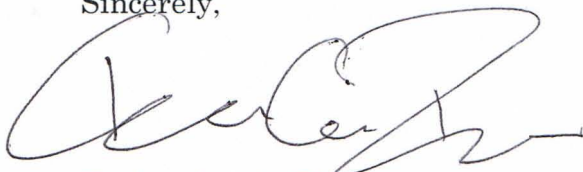
No other capital case has ever come before your desk more demanding of your immediate intervention. This is the type of case for which the power to issue an executive reprieve was intended to be used. A 30-day reprieve is necessary to allow state officials time to work together and arrive at a solution ensuring that Mr. Buck's sentence is determined through a process untainted by considerations of his race.

"As I explained in a filing before the United States Supreme Court...it is inappropriate to allow race to be considered as a factor in our criminal justice system....[T]he United States Supreme Court agreed. The people of Texas want and deserve a system that affords the same fairness to everyone."

-- Texas Attorney General John Cornyn (June 2000)

On behalf of Mr. Buck, his family, Senator Rodney Ellis, former Assistant District Attorney Linda Geffin, and surviving victim Phyllis Taylor, I respectfully request a 30-day reprieve.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Black', with a large, stylized flourish at the end.

Katherine C. Black
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